

SOUTH AFRICA / JUDGMENT

Masilela and Another v Masilela and Another (7358/2021) [2022] ZAGPPHC 332 (13 May 2022)

[2022] ZAGPPHC 332

COURT

North Gauteng High Court, Pretoria

BEFORE

Makhoba

CASE / FILE NUMBER

7358/2021

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

Case

number: 7358/2021

REPORTABLE:

NO/YES

OF

INTEREST TO OTHER JUDGES: NO/YES

REVISED.

NO/YES

13

MAY 2022

In

the matter between:

Sibusiso
Koos
Masilela
First Applicant
Elizabeth
Kgeleswane
Masilela
Second Applicant
And
Lindi
Ronsy
Masilela
First Respondent
Gerald
Masilela
Second Respondent

JUDGMENT

MAKHOPA J

1. This is an opposed consolidation application. The applicants seek to consolidate a rescission of judgement application under case number 70305/2018 and a declaratory application launched by the respondents under case number 72608/2021.

Factual

Background

2. The applicants in this matter inherited a property described as 712 Section C, Mamelodi Township, Moseka Street, Pretoria. They inherited it from the deceased estate of the late Johannes Masilela.
3. Subsequently, the applicants instituted eviction proceedings against the respondents where an interim eviction order was granted on the 14th August 2019 and the final order was granted on the 3rd September 2019. During November 2019, the respondents instituted a declaratory application proceeding under case number 72608/2019

against the applicants in this matter, praying the court to declare the transfer and subsequent registration of the property in the names of the late Johannes Masilela and Sophie Masilela to be unlawful and set aside, and further declaration that the subsequent registration of the property in the names of the applicants, in this matter, to be null and void.

4. In March 2020, the respondents instituted a rescission application proceeding under case number 70305/2018 against the applicants asking the court to rescind and/or set aside eviction and costs order granted against them on the 3rd September 2019. In her opposing affidavit, the first respondent says that she is not completely averse to the idea of a consolidation of the application for eviction and the application for a declaratory order [1].
5. She further states that the reasons for rescission of judgement differ substantively from the grounds put forward for consideration of the application for a declaratory order [2]
6. In addition, according to the respondent keeping the rescission of the judgement separate is proper and logical in that should the court refuse to grant the rescission, then she will be entitled to take the matter up on appeal or review and this will impact on the application for a declaratory order.
7. Ms Mazibuko who appeared on behalf of the respondent addressed the court. She informed the court that she did not draft and file the heads of argument. The heads of argument were compiled by her colleague Mr Tlou Phihlela. Ms Mazibuko submitted that in principle the respondent has no objection to the application by the applicant. She however submitted that it will be appropriate if the two applications were separated.
8. Mr Pillay who appeared on behalf of the applicants submitted that initially Mr Phihlela who represented the respondents did not oppose the application. Mr Pillay took the court through correspondence between himself and Mr Phihlela, showing that contrary to Mr Phihlela's views as articulated in his heads of argument, he did not in principle oppose the application.
9. The court has a discretion whether or not to order consolidation. However, in exercising this discretion, the court must be satisfied

that such a course is favoured by the balance of convenience and that there is no possibility of prejudice suffered by any party[3]

10. The onus in such an application is upon the party applying for consolidation. Thus, therefore the applicant in this matter bears the onus[4].
11. Rule 11 of the Uniform Rules of the court reads as follows:

"Consolidation of actions"

Where separate actions have been instituted and it appears to the court convenient to do so, it may upon the application of any party thereto and after notice to all interested parties, make an order consolidating such actions, whereupon-

- a) the said actions shall proceed as one action;
- b) the provision of rule 10 shall mutatis mutandis apply with regard to the action so consolidated; and

- c) the court may make any order which to it seems meet with regard to the further procedure, and may give one judgement disposing of all matters in dispute in the said actions.”

This consolidation application is brought in terms of the above-mentioned Rule 11 read with Rule 10.

12. In my view it is clear that in both the rescission and declaratory order applications, same issues would arise and would require same evidence.
13. In my view, the submission in support of the application by Mr Pillay in both the founding affidavit and the heads of argument are plausible. If the two applications are not consolidated, there is indeed the possibility of two different courts giving contradicting judgements on the same issue in dispute.
14. Again, I am satisfied that the applicant has met all the requirements to show that it would be just, fair and appropriate for the court to grant the application.
15. I make the following order:
- a) The applications shall be consolidated;
- b) The cost of the application to be that in the main application.

D MAKHOB A

JUDGE OF THE HIGH COURT,

GAUTENG DIVISION, PRETORIA

APPEARANCES:

For the applicant: Mr Thesigan Pillay

Instructed by: Pillay Thesigan Inc.

For the respondent: Advocate N. Mazibuko

Instructed by: Legal aid South Africa, Pretoria

Date heard:

20 April 2022

Date of Judgment: 13 May 2022

[1] Caselines 007-5 para 2.3

[2] Caselines 007-7 para 3.5 and 3.7

[3] Minister of agriculture v Tongaat Group Ltd 1976 (2) SA 357 (D)

[4] Minister of agriculture v Tongaat Group Ltd Supra

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